

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                                   |   |                          |
|-----------------------------------|---|--------------------------|
| BENNIE D. GRAVES,                 | ) |                          |
|                                   | ) |                          |
| Petitioner,                       | ) | Civil Action No. 10-894  |
|                                   | ) |                          |
| v.                                | ) | Judge Conti              |
|                                   | ) | Magistrate Judge Bissoon |
| JEFFREY A. BEARD, <i>et al.</i> , | ) |                          |
|                                   | ) |                          |
| Respondents.                      | ) |                          |

**MEMORANDUM ORDER**

Bennie D. Graves ("Petitioner") is a State prisoner who filed a federal habeas petition, pursuant to the provisions of 28 U.S.C. § 2254, on July 6, 2010. (ECF No. 1). The matter was referred to a United States Magistrate Judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrate Judges.

The magistrate judge issued a report and recommendation on July 19, 2010, recommending the preservice dismissal of this petition as it was filed beyond the applicable statute of limitations. (ECF No. 7) at 1. The magistrate judge further recommended that a certificate of appealability be denied. Id. at 5. Petitioner filed objections to the report on September 2, 2010. The bar of the statute of limitations is applicable here and the objections did not show a basis for equitable tolling. Petitioner was also granted two extensions of time to file additional objections, but ultimately failed to do so. See (ECF Nos. 14 and 15); see also Order of September 22, 2010; see also Order of October 25, 2010.

After *de novo* review of the pleadings and documents in the case, together with the report and recommendation (ECF No. 7), the following ORDER is entered:

AND NOW, this 14th day of January, 2011,

IT IS HEREBY ORDERED that Petitioner's petition for writ of habeas corpus be  
DISMISSED.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that the magistrate judge's report and recommendation (ECF No. 5)  
is adopted as the opinion of this Court. The Clerk of the Court is directed to mark this case  
CLOSED.

/s/ Joy Flowers Conti  
Joy Flowers Conti  
United States District Judge

cc:

**BENNIE D. GRAVES**

DW-2957

SCI Smithfield

P.O. Box 999

1120 Pike Street

Huntingdon, PA 16652

Magistrate Judge Bissoon